

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**WILLIAM PENN SCHOOL DISTRICT,
et al.,**

NO. 587 MD 2014

Petitioners

v.

**PENNSYLVANIA DEPARTMENT OF
EDUCATION, et al.,**

Respondents

**LEGISLATIVE RESPONDENTS' MEMORANDUM OF LAW IN
OPPOSITION TO APPLICATION FOR LEAVE TO INTERVENE**

Respondents' Senate President *Pro Tempore* Joseph B. Scarnati, III and Speaker of The House Michael C. Turzai¹ ("Legislative Respondents") by and through their undersigned counsel, respectfully submit the following Memorandum of Law in Opposition to the Application for Leave to Intervene submitted by the Philadelphia Federation of Teachers, Local III, of the American Federation of Teachers, AFL-CIO ("PFT"), by its President and Trustee *Ad Litem* Jerry Jordan, and the American Federation of Teachers Pennsylvania AFT, AFL-CIO ("AFT

¹ On or about December 1, 2014, Samuel H. Smith ceased serving as Speaker of the Pennsylvania House of Representatives. On January 6, 2015, the House elected Michael C. Turzai as the new Speaker for the upcoming legislative term. Accordingly, pursuant to Pa. R.A.P. 502(c), Speaker Turzai is substituted as a Respondent in place of former Speaker Smith.

PA”), by its President and Trustee *Ad Litem* Ted Kirsch (collectively, “Proposed Intervenors”).

I. PROCEDURAL AND FACTUAL BACKGROUND

On November 10, 2014, five school districts, parents of two children enrolled in the Philadelphia School District, parents of three children enrolled in other Pennsylvania school districts, the Pennsylvania Association Of Rural And Small Schools (“PARSS”), and the National Association For The Advancement Of Colored People—Pennsylvania State (“NAACP”) (collectively, “Petitioners”) commenced this action by filing their Petition for Review in the Nature of an Action for Declaratory and Injunctive Relief (“Petition”) against the Legislative Respondents, then-Governor Thomas W. Corbett and other state officials. The Petitioners contend that Pennsylvania’s system for funding public education is unconstitutional because, according to Petitioners, it is inadequate to meet the educational needs of students in poorer school districts.

On December 10, 2014, Legislative Respondents filed Preliminary Objections to the Petition. Commonwealth Respondents filed separate Preliminary Objections. Briefs in Support of both sets of Preliminary Objections were submitted on January 16, 2015.

On January 5, 2015, Proposed Intervenors filed their Application for Leave to Intervene (“Application”) and supporting Memorandum of Law (“Application

Brief”). PFT is the collective bargaining representative for certain employee bargaining units in the Philadelphia School District. AFT PA is a labor union that supports the activities of AFT Locals in Pennsylvania.

II. LEGAL ARGUMENT

A. Standard For Intervention

The Proposed Intervenors have moved to intervene in this action under Pa. R. Civ. 2327. “It is well established that a ‘question of intervention is a matter within the sound discretion of the court below and unless there is a manifest abuse of such discretion, its exercise will not be interfered with on review.” *Wilson v. State Farm Mut. Auto. Ins. Co.*, 517 A.2d 944, 947 (Pa. 1986) (quoting *Darlington v. Reilly*, 69 A.2d 84, 86 (Pa. 1949)) (emphasis added). “A trial court will not be found to have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable or the result of partiality, prejudice, bias, or ill-will.” *Stenger v. Lehigh Valley Hosp. Ctr.*, 554 A.2d 954, 956 (Pa. Super. Ct. 1989). The Proposed Intervenors have not provided a basis for this Court to exercise its discretion to permit their intervention.

“When faced with a request for intervention, a trial court must first determine whether the petitioner comes within one of the classes of persons entitled to intervene pursuant to Rule 2327.” *Johnson v. Tele-Media Co. of McKean Cnty.*, 90 A.3d 736, 742 (Pa. Super. Ct. 2014). “It is the petitioner's

burden to show that all the requirements of Rule 2327 are met.” *Id.* Pennsylvania Rule of Civil Procedure 2327 provides, in pertinent part, that:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if . . .

(3) such person could have joined as an original party in the action or could have been joined therein; or

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

The Proposed Intervenors assert associational standing on behalf of their individual members and have averred that this action may affect the economic interests of their individual members by increasing their compensation. [Application Brief at 6-7]. PFT also asserts that the determination of this action would affect the interests that PFT itself has in “preserving the integrity of its collective bargaining agreement with the” Philadelphia School District, and AFT PA asserts that it has an interest in “support[ing] and assist[ing] the collective bargaining of its local affiliates[.]” [Application Brief at 7]

It is highly questionable whether the Proposed Intervenors fall within a class of persons entitled to intervene pursuant to Rule 2327. As the Proposed Intervenors point out in their own Application, PFT has brought an action against the Philadelphia School District to enforce those interests **directly**. AFT PA’s other local affiliates may bring similar actions or pursue their rights under the

Public Employe Relations Act. Although they have standing to bring those separate actions, it is highly questionable whether the stated interests raised by the Proposed Intervenors are sufficiently “direct” and “immediate” to grant standing. *See Wm. Penn Parking Garage v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975) (as part of standing analysis, requiring plaintiff to establish a “direct” interest, *i.e.*, that the matter complained of caused harm to the party’s interest, and an “immediate” interest, *i.e.*, that the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question).

Regardless, the Proposed Intervenors’ interests are not unique because such interests, like the interests of the original Petitioners, are rooted in overturning the current education funding system so that funding can be increased to certain school districts, including Philadelphia. As set forth below, those interests are adequately represented by the existing Petitioners, which allows this Court to exercise its discretion under Pennsylvania Rule of Civil Procedure 2329 to deny the present Application for Intervention.

B. The Court Should Exercise Its Discretion To Deny The Application For Intervention Because The Proposed Intervenors’ Interests Are Adequately Represented.

Regardless of whether the Proposed Intervenors have demonstrated that this action will affect their legally enforceable interest, “a mere prima facia basis for

intervention is not enough.” *Wilson v. State Farm Mut. Auto. Ins. Co.*, 517 A.2d 944, 947 (Pa. 1986). The right to intervene “is not absolute.” *Acorn Dev. Corp. v. Zoning Hearing Bd. of Upper Merion Twp.*, 523 A.2d 436, 437 (Pa. Commw. Ct. 1987). Pennsylvania Rule of Civil Procedure 2329 specifically provides that “an application for intervention may be refused, if . . . the interest of the petitioner is already adequately represented[.]” As such, this Court has discretion to reject the Proposed Intervenors’ Application for Leave to Intervene, and it is appropriate to do so.

Indeed, the Supreme Court has upheld this Court’s exercise of its discretion to reject an application to intervene in an education funding case. *See Pennsylvania Ass’n of Rural & Small Sch. v. Casey*, 613 A.2d 1198, 1199 (Pa. 1992) (“*PARRS Case*”). In the *PARRS Case*, PARSS filed a complaint against Governor Casey seeking a declaratory judgment that the public school funding formula violated the Pennsylvania Constitution, as they have also done in the present action. *Id.* The Central Bucks School District, the Pennsylvania State Education Association (“PSEA”),² and other parties petitioned to intervene and the school district asserted that it had an interest in the level of state subsidies it received under the school funding law. *Id.* at 1200. Although the Commonwealth Court agreed that the school district had such an interest, this Court denied the

² Like Proposed Intervenors in this case, PSEA is a labor organization representing teachers.

school district's and PSEA's petitions to intervene because that interest was adequately represented by PARSS, which also had an interest in the financial well-being of school districts throughout the state. *Id.* at 1200-01. The Supreme Court upheld the denial of the petition to intervene and affirmed this Court's reasoning. *Id.* The Supreme Court also noted that to the extent the school district suggests that its "views are too important to be ignored in this action" it could "petition the Commonwealth Court to be heard as amicus curiae." *Id.* at 1201 n.4.

Here, like in the *PARSS Case*, the Proposed Intervenors' interests are adequately represented by the Petitioners, which include PARSS. Both the Proposed Intervenors and the Petitioners seek to increase the funding to school districts throughout the Commonwealth. The Petitioners include parents of two students enrolled in the Philadelphia School District. As such, those parents' interests are identical to the interests asserted by PFT. The Proposed Intervenors have not provided a separate basis for overturning the current education funding system. Indeed, the Proposed Intervenors have proposed to adopt the Petition in its entirety, instead of filing a separate petition outlining their unique interests. It strains credulity to suggest that the positions set forth in the Petition will not be adequately represented by the Petitioners and their counsel, which include the Public Interest Law Center of Philadelphia, the Education Law Center and one of the largest private law firms in the world, O'Melveny & Myers LLP.

Furthermore, the Proposed Intervenors have failed to present this Court with any basis to conclude that their interests are not already adequately represented by the Petitioners. Instead of arguing that the Petitioners inadequately represent their interests, the Proposed Intervenors argue only that they can present different evidence and legal arguments to support the Petition at some unspecified point in the future. In their Application, the Proposed Intervenors aver that “[n]o other party fully represents [their interests] to improve the system of public education in the Commonwealth” and that no other party can “attest as comprehensively” as PFT to the “numerous deficiencies” purportedly requiring an increase in education funding. [Application at ¶ 47-48]. This argument is belied by the inclusion of parents of Philadelphia School District children. In the Application Brief, PFT only argues that it has a “unique position” due to its “history of representing” employees in Philadelphia, and AFT PA only argues that “its advocacy and representational interests puts the AFT PA in a unique position.” [Application Brief at 8]. In the *PARSS Case*, the Supreme Court rejected these arguments, holding that a “desire to pursue a preferred litigation strategy or [legal] theory was not an interest entitling” intervention. 613 A.2d at 1201.

C. The Proposed Intervenors May File Amicus Briefs To Present This Court With Any Unique Arguments Or Perspective.

Although the Proposed Intervenors should not be permitted to intervene in this case, there is an avenue available to them to present any legal they may have in

support of the Petition or in opposition to the pending Preliminary Objections. The Proposed Intervenors may submit an amicus brief in support of the Petition. Indeed, in the *PARSS* case, the Supreme Court specifically noted this option as they upheld the denial of leave to intervene.

Allowing the Proposed Intervenors to join this action would open the door to any union, individual teacher, or parent of a student enrolled in public school to intervene. Likewise, if this matter proceeds to discovery or an evidentiary hearing, the inclusion of the Proposed Intervenors will unnecessarily complicate this case. Proposed Intervenors' position that the current system for funding public education in Pennsylvania is unconstitutional is already ably represented by three sets of lawyers on behalf of Petitioners. Participation of additional parties and counsel is simply unnecessary, and would serve as a burden rather than a benefit to the existing parties and the Court. To the extent that Proposed Intervenors have any special interests or issues they desire to raise to the Court, instead of allowing intervention, it is more appropriate for the Proposed Intervenors to participate as *amicus curiae*.

III. CONCLUSION

The Pennsylvania Rules of Procedure allow this Court to exercise its discretion to reject the Application if the Proposed Intervenors' interests are adequately represented by other parties. Both the Petitioners and Proposed Intervenors seek to overturn the current education funding system and require the Legislative Respondents to increase education funding. The Proposed Intervenors' interest in this lawsuit, if any, are adequately represented by the Petitioners' able counsel. Therefore, the Application should be denied.

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